

## REMARKS

This responds to the Final Office Action dated July 9, 2008. Claims 1, 3, 12, 13, 15-19, 22, 23, 37, and 38 are amended. No claims are canceled. Claims 39-46 are added. As a result, claims 1-23 and 39-46 are now pending in this patent application.

### Information Disclosure Statement

Applicant submitted an Information Disclosure Statement and a 1449 Form on November 16, 2004. Applicant notes the reference listed on page 2, under “Other Documents” has not been initialed by the Examiner. Applicant respectfully requests that an initialed copy of the 1449 Form be returned to Applicant’s Representatives to indicate that the cited references have been considered by the Examiner.

### §112 Rejection of the Claims

Claim 7 was rejected as indefinite on the grounds that claim 3 recites the “QRS complex,” while claim 7 recites a T-wave.” The Office Action asserts “[i]t is unclear if the Applicant has additional sensing circuitry to detect the T wave or if the T wave is sensed with the same circuitry that detects the ‘QRS complex.’” Applicant respectfully submits that this is not relevant in that one of ordinary skill in the art would reasonably understand that claim 7 can encompass both the case in which the same circuitry is used and the case in which additional circuitry is used. Accordingly, Applicant respectfully submits that claim 7 is sufficiently clear in its present form. Therefore, Applicant respectfully requests withdrawal of this rejection.

### §102 Rejection of the Claims

Claims 1-7 and 11-23 were rejected under 35 U.S.C. § 102(b) for anticipation by Stotts et al. (U.S. Patent No. 5,161,529) (hereinafter Stotts). Applicant has amended these claims to overcome this rejection.

Applicant cannot find in the cited portions of Stotts any disclosure of a sensing circuit configured to trigger “gradual” adjustment of a frequency bandwidth as a function of an elapsed time relative to at least one of a therapy event or an evoked or intrinsic event of the heart signal, as similarly presently recited or incorporated in these claims.

Instead, as noted by the Office Action, Stotts operates such that “*at the moment* that a stimulating pulse is delivered to the heart, the sense amplifier is *switched* to a lower frequency bandpass . . . After a time interval . . . the amplifier is *switched* back to the original bandpass characteristic” (*See* Office Action at 3, citing Stotts col. 3, lines 14-28 (emphasis added).) Therefore, Stotts apparently abruptly switches between two discrete bandpass characteristics at a single moment, rather than making a gradual adjustment of a frequency bandwidth as a function of elapsed time, as presently similarly recited or incorporated in claims 1-7 and 11-23. Accordingly, Applicant respectfully requests withdrawal of this rejection of these claims.

§103 Rejection of the Claims

Claims 8-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Stotts et al. (U.S. Patent No. 5,161,529). Applicant respectfully traverses this rejection on the grounds that no *prima facie* case of obviousness presently exists with respect to these claims, because Applicant cannot find all elements presently recited or incorporated in these claims in Stotts and/or the reasoning of the Office Action, for the reasons discussed above with respect to the § 102 rejection.

Further, the Office Action admits that “Stotts et al. discloses the claimed invention except for the range of the first time period.” (*See* Office Action at 4.) Instead, the Office Action asserts that “[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the range of time for the first time period . . . [to] provide the predictable results of modifying the treatment to meet specific patient needs.” (*See id.*) However, Stotts is apparently directed toward detecting an evoked response to a cardiac stimulation. By contrast, claims 8-10 of the present patent application recite a very different time period that can be used for a very different purpose: the time periods recited in claims 8-10 can be sufficiently long so as to allow the ventricle to repolarize (allow a T-wave). This clinically significant benefit is explained in an example provided in the specification of the present patent application. (*See* Application at page 9, lines 10-15.)

In sum, Applicant respectfully requests withdrawal of this rejection of claims 8-10.

*Reservation of Rights*

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled or withdrawn claims in a subsequent patent application claiming the benefit of priority of the present patent application, or to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**AMENDMENT AND RESPONSE UNDER 37 C.F.R. § 1.116 - EXPEDITED PROCEDURE**

Serial Number: 10/615,636

Filing Date: July 10, 2003

Title: CARDIAC RHYTHM MANAGEMENT SYSTEM WITH TIME-DEPENDENT FREQUENCY RESPONSE

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**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6951

Date Sept. 3, 2008

By 

Suneel Arora  
Reg. No. 42,267

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 3 day of September, 2008.

Name Kate Garrison

Signature Kate G